

304 CMR 8.00: CHAPTER 61, FOREST CLASSIFICATION

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8.01: Purpose and Authority

- (1) The Commissioner of Environmental Management promulgates 304 CMR 8.00 pursuant to the authority granted in M.G.L. c. 61, § 2.
- (2) The purpose of 304 CMR 8.00 is to clarify the procedure for classification of forest land in the Commonwealth of Massachusetts.

8.02: Definitions

Assessors means the board of assessors for the municipality or municipalities in which the parcel is located.

Authorization of the owner means the power actually given or reasonably presumed to be given by any owner in retaining any party to act in his stead to oversee cutting, harvesting, any other forest land treatment, or to prepare or submit documents concerning the owner's property even when such party acts to exceed the power actually given by the owner.

Certification means approval of a forest management plan by the State Forester and whenever used or defined shall include any subsequent certification or "recertification".

Certified means the status of land upon which a certificate has been issued by the State Forester as qualifying to be taxed in accordance with the provisions of M.G.L. c. 61 and being entitled to the subsequent ministerial act of the assessors to have a lien recorded thereon and be taxed in accordance with said provisions.

Classification means the tax status attaching by operation of law to all land qualifying under 304 CMR 8.00, which qualification is duly certified by the State Forester.

Department means the Massachusetts Department of Environmental Management.

Forest land means land that satisfies the criteria set forth in 304 CMR 8.03.

Owner means the person or persons holding an undivided fee interest in the subject parcel under a duly recorded deed, or by operation of law, including any legally empowered representative of a trust, partnership, corporation or similar entity holding such undivided interest.

Parcel means land owned by the same owner(s), whether comprised of a single described tract or of more than one tract of physically adjacent or contiguous land, and upon which there is no subdivision plan on file and which has no encumbrances on title that would interfere with the land being used for forestry purposes in conformance with M.G.L. c. 61 and 304 CMR 8.00.

8.02: continued

Products tax means the tax due on forest products cut on forest land by the owner, or a party having authorization of the owner, which tax is equal to 8% of the stumpage value of such forest products.

(11) Regional Office means:

Southeastern Massachusetts
Region I
Myles Standish State Forest
Cranberry Road
Box 66
S. Carver, Massachusetts 02366
(Bristol, Norfolk, Plymouth, Suffolk, Barnstable and Island Counties)

Northeastern Massachusetts
Region II
Great Brook Farm State Park
817 Lowell Road
Carlisle, Massachusetts 01741
(Essex and Middlesex Counties)

Central Massachusetts
Region III
Clinton Nursery
Route 110
Box 155
Clinton, Massachusetts
(Worcester County)

Pioneer Valley
Region IV
Univ. of Mass. at Amherst
Cold Storage Road
Box 484
Amherst, Massachusetts 01004
(Franklin, Hampden and Hampshire Counties)

Berkshires
Region V
South Mountain Visitors Center
740 South Street
Box 1433
Pittsfield, Massachusetts 01202
(Berkshire County)

Same Owner(s) means person or persons, legal entities or otherwise who hold present title to a parcel of land covered by a single certification in the same name(s) and in the same capacity, whether as sole owner, tenants in common, joint tenants or tenants by the entirety. In the event the grantee(s) on a deed to any portion of the parcel differs from the grantee(s) on a deed to another portion, one or more deeds must be conveyed into identical ownership before the parcel will qualify under one certification. Change of ownership occurs on the occasion of any change of title on a deed or deeds for classified forest lands including but not limited to actual transfer in fee by deed, by inheritance, by eminent domain, by court decree, or by deed transfer for purposes of incorporation, for addition of or removing undivided interests (husband to husband and wife, parent to parents and child and so on) or for clearing title.

State Forester means the Commissioner of Environmental Management or any employee of the Department the Commissioner specifically authorized in writing to act in his capacity.

Stumpage value means the fair market value of the timber prior to harvesting or, in the absence of sufficient evidence thereof, as determined by the State Forester, the price listed for comparable timber in the most current edition of the Southern New England Stumpage Price Survey published at the time of the action requiring the determination of value.

Subdivision plan on file means an approved definitive plan for division of the parcel under the provisions of and not exempted from the Subdivision Control Law, M.G.L. c. 41, submitted by the owner or with the authorization of the owner to any local board or agency. Any such approved plan formally withdrawn in writing by the owner or by a party acting with authorization of the owner or rendered void or inoperative by law through the passage of time or otherwise shall not be considered a subdivision plan on file.

Used for forest production means the silvicultural practices consistent with M.G.L. c. 132 and

any regulations adopted thereunder.

8.03: Forest Lands; Criteria

- (1) To be eligible for classification, land must meet the following criteria:
 - (a) be a parcel of land containing ten or more adjacent or contiguous acres;
 - (b) be at least 16 and 7/8% stocked with forest products and contain at least 7 and 5/10 square feet of basal area per acre by forest trees of any size; or formerly had such tree cover and is not currently developed for non-forest use, or is a plantation containing at least 500 trees per acre; and
 - (c) has no subdivision plan on file.
- (2) The following areas may be included in the calculation of acreage:
 - (a) certain permanent or temporary wetlands, water courses and submerged areas and other minor unproductive areas deemed by the State Forester to be compatible with forest production;
 - (b) cleared rights-of-way not exceeding 20 feet in width, including road bed, brushed out road edges, and other reasonable improvements to reduce erosion of the right-of-way and to protect forest land, wetlands and stream crossings, or when the primary purpose of the improvement is for forest protection and access for forest management. The maximum width may be exceeded for turnouts, turn arounds or for temporary storage areas for forest products.
- (3) Land on which buildings and structures are erected and which is accessory to their use shall be excluded from the calculation of acreage. In the instance of dwelling units, the area excluded shall be the minimum legal house lot size established in that town, or, in the event there is no lot size established in that town, the minimum lot size established in any adjacent community.

8.04: Application for Classification and Forest Management Plan

- (1) A complete application for classification shall consist of:
 - (a) One original copy of an application certificate and one original and two complete copies of a forest management plan, signed by the owner.
 - (b) A map or maps of the parcel to be classified relating to clearly marked and discernible boundaries at least to the extent required in the "Directions for the Preparation of Chapter 61 Management Plan."
 - (c) A certified check or money order in the amount set for the application fee, determined under 304 CMR 8.09.
- (2) The owner shall prepare a complete forest management plan, outlining a phased ten year program of forest management, in full accordance with the current edition of the "Directions for the Preparation of Chapter 61 Management Plan" by the State Forester and available from the Regional Office. The State Forester shall accept no variation from this format. The State Forester shall return unacceptable forest management plans and application materials to the applicant. Submission of an unacceptable forest management plan may lead to delayed certification.
- (3) When the parcel to be classified is located in more than one town, a forest management plan may be prepared treating the entire parcel as a sustained yield unit, but proper reference shall be made in each section of the management plan for the portions in each town. The owner shall provide a separate application certificate for each town. The owner shall provide an additional copy of the management plan for each town listed in the management plan.
- (4) The owner shall be responsible for reconciling ownership and acreage discrepancies between the assessor's records and the current deed recorded in the Registry before completing an application for certification.

8.05: Procedure For Certification and Classification

- (1) An owner shall submit to the State Forester a complete application as defined in 304 CMR 8.04(1) to the appropriate Regional Office no later than 5:00 p.m. on or before June 30 of the year preceding the year for which classification is sought. The State Forester shall reject any incomplete applications.

8.05: continued

- (2) The State Forester shall determine whether the land subject to the application qualifies as forest land and otherwise meets the criteria and requirements set forth under M.G.L. c. 61 and 304 CMR 8.00. In the case of recertification, the owner's failure to abide by or perform the treatments set forth in a forest management plan during a prior recertification period may result in denial of certification.
- (3) If the determination is made that the land qualifies as forest land, the State Forester shall issue certification of the parcel by affixing his signature to the application, and shall return, with a cover letter, the approved application certificate and forest management plan to the owner.
- (4) The cover letter of the State Forester accompanying the certified documents returned to the owner shall specify therein that payment of the application fee has been made, what products tax, if any, is due the Town from the owner for cutting that occurred within two years prior to initial certification, a clear identification of the owner, and clear indication of the owner's obligation to pay recording fees collected by the registry of deeds. The State Forester shall send a copy of this cover letter to the assessors.
- (5) The owner shall deliver three copies of the approved application certificate and one copy of the approved forest management plan, together with a certified check or checks for the purposes and in the amounts specified in the cover letter of the State Forester, to the assessors no later than 5:00 p.m., on or before August 31 in the year preceding the classification.
- (6) Upon receipt of the documents set forth above, the assessors shall forthwith record in the appropriate registry of deeds, on a form approved by the Commissioner of Revenue, a statement of the classification which shall constitute a lien upon the land for taxes levied under the provision of the M.G.L. c. 61. The statement shall include the name of the owner and a description of the parcel adequate for identification. The assessors shall return one copy of the recorded statement including the date and book and page to the appropriate Regional Office of the State Forester and the owner. The assessors shall sign and date the application certificate and return one copy to the appropriate Regional Office and a second copy to the owner.
- (7) The assessors shall, upon the request of the owner, provide the owner in a timely fashion a clear statement of the taxes which would in each tax period be due under the provision of M.G.L. c. 59 and those actually being levied under M.G.L. c. 61.

8.06: Management of Classified Forest Land

- (1) The owner shall not diverge from the approved treatments in the forest management plan without prior written approval of the State Forester.
- (2) Any amendment to the forest management plan within the term of any ten year classification period that involves changes in silvicultural treatment, practices, area and size of parcel may be allowed at the discretion and only with the written approval of the State Forester when, in his discretion, such change does not substantially detract from the agreed upon forest management objectives.
- (3) The owner of certified forest land shall annually pay to the municipality in which the forest land is located a products tax on the stumpage value of all forest products cut therefrom. The owner shall notify the assessors of all cutting done, either by the owner or by a party with authorization from the owner, on such forest land, and the State Forester shall provide the assessors a copy of all cutting plans filed with the Department under M.G.L. c. 132, §§ 40-46 concerning land located in that municipality. The owner, after receipt of written notification from the assessors of his obligation to pay a products tax, shall annually, before May 1, submit to the assessors, on a form approved by the State Forester, a return setting forth the amount of forest products cut from classified forest land, including forest products cut in accordance with a cutting plan filed under M.G.L. c. 132, during the preceding calendar year and such other information as may be required for calculation of the products tax. The assessors shall collect the products tax and other real estate taxes payable under M.G.L. c. 61, § 3 in the same manner as taxes assessed under M.G.L. c. 59.

8.06: continued

(4) A new owner of classified forest land who elects to continue under the provision of M.G.L. c. 61 shall submit to the appropriate Regional Office, within 90 days of transfer of title, an amended application certificate and amended forest management plan with updated information, together with applicable fees.

(5) If a sale of forest land constitutes only a portion of the parcel subject to classification, the new owner shall, within 90 days of the transfer of title, submit an amended application certificate and forest management plan together with applicable fees to the appropriate Regional Office. The owner of the remaining portion of the parcel shall within 90 days of transfer of title submit an amended application certificate and forest management plan together with applicable fees to the appropriate Regional Office.

(6) At the end of each ten year classification period, an updated forest management plan and application certificate as required above shall be submitted by the owner to the appropriate Regional Office no later than 5:00 p.m., on or before June 30 prior to the year of recertification. The owner's failure to abide by the provisions of the previous forest management plan may result in denial of recertification.

8.07: Voluntary Addition to and Withdrawal from Certification of Forest Land During Term of Classification

(1) The owner may voluntarily add forest land adjacent or contiguous to or subtract from the forest land covered by a management plan and certificate only under the following terms and conditions:

(a) Additional adjacent or contiguous lands may be incorporated into the same application certificate and classification upon:

1. Submission to and approval by the State Forester of an amended forest management plan and application certificate no later than 5:00 p.m., on or before June 30 of the year preceding the period of desired classification together with the appropriate application fee;
2. Submission of the approved amended forest management plan and amended certificate to the assessors no later than 5:00 p.m., on or before August 31 of the year preceding the period of desired classification; and
3. Such amended application certificate providing for classification and taxation of the entire augmented parcel for the balance of the term of the original classification period.

(b) Land in quantities less than that which would reduce the classified parcel to less than ten contiguous acres may be voluntarily withdrawn by the owner during the term of classification provided that:

1. application in the form of an amended forest management plan together with applicable fees is submitted to the State Forester no later than 5:00 p.m., on or before June 30;
2. the State Forester, by approving said amended forest management plan, certifies that the removal of said acreage does not substantially detract from the goals of forest production set forth in the original management plan; and
3. the new certificate and amended forest management plan are submitted to the assessors no later than 5:00 p.m., on or before August 31, together with all applicable registry fees and payment of all penalties then due for voluntary withdrawal of said land from classification.

(2) Only one such addition or withdrawal shall be allowed in any tax year. Failure to comply with any or all of the above conditions may subject the owner to action for involuntary withdrawal from classification of the entire parcel.

8.08: Involuntary Withdrawals from Certification; Procedures for Hearings and Appeals

(1) The following may initiate an action for denial of, removal from, or orders for M.G.L. c. 61 classification:

8.08: continued

(a) The Board of Assessors of the town in which forest land classified under M.G.L. c. 61 or subject to application is located may appeal to the State Forester as follows:

1. if, in their judgment, the land is not entitled to or does not qualify for certification or classification under M.G.L. c. 61;
2. if, in their judgment, the land is not being managed in accordance with an approved forest management plan; or
3. if, in their judgment, the land is being used for purposes incompatible with the production of forest products.

(b) The State Forester may initiate a proceeding for declassification at his own initiative when it comes to his knowledge that:

1. the land is not being managed in compliance with the certified management plan;
2. the owner has failed to comply with the law or rules and regulations published pursuant thereto; or
3. the land does not otherwise qualify under the provisions of M.G.L. c. 61.

(2) In the case of an appeal brought by the assessors, the assessors shall, on or before December 1, submit such appeal in writing to the Commissioner of the Department, mailed by certified mail to 100 Cambridge Street, Boston, MA 02202, in an envelope clearly marked on its face "APPEAL UNDER CHAPTER 61", with a copy to the affected owner, setting forth the reasons for such appeal.

(3) In the case of a proceeding brought by the State Forester, the State Forester shall, on or before December 1, provide notice of such proceeding in writing, mailed by certified mail to the owner, with a copy to the assessors, setting forth the reasons for the proposed removal from classification.

(4) The State Forester shall investigate the appeal of the assessors, or the proceeding for removal brought at his own initiative, and issue a decision denying classification, removing land from classification, or granting classification, subject to any terms or conditions he deems reasonable, on or before March 1, sending copies by certified mail to the owner and assessors.

(5) The owner or assessor may appeal the State Forester's decision and request a hearing on or before April 15. Such appeal shall be submitted in writing to the Commissioner of the Department on or before December 1st, mailed by certified mail to 100 Cambridge Street, Boston, MA 02202, in an envelope clearly marked on its face "APPEAL UNDER CHAPTER 61", with a copy to the assessors or the owner, as appropriate, and shall set forth the reasons for such appeal. In the event no appeal is received by the Commissioner of the Department from the assessors or the owner on or before April 15 immediately following the date of the issuance of the State Forester's decision, the State Forester's decision becomes final and binding on the assessors and the owner.

(6) Upon timely receipt of the appeal and request for a hearing, the State Forester shall take all necessary administrative actions on or before May 15, to constitute a panel that will hear and decide the subject of the appeal. The panel shall consist of three members: one nominated by the State Forester, one nominated by the assessors, and one selected by the other two in accordance with this section. When so notified in writing by the State Forester or his nominee, the assessors shall within ten days respond to the appropriate Regional Office in writing of the name of the assessors' nominee. With the administrative assistance of the Regional Office, said two nominees shall meet or otherwise confer and within seven days agree on a third panel member who shall serve as chairman. Said chairman shall then utilize the administrative services of the Regional Office to set a time and place for the hearing and to properly notify the parties.

8.08.: continued

(7) In the event the assessors fail to nominate a panel member within the ten day period, the State Forester shall nominate and select that member. If the State Forester's and assessors' nominees (or, in the event of the assessors' failure to nominate a member, the two nominees of the State Forester) fail to within seven days agree on and designate a third member to serve as chairman, then the State Forester shall select the third member to serve as chairman of the panel.

When fully constituted, the panel shall give at least seven days written notice to the parties by certified mail of an established hearing date. The panel shall commence the hearing on or before June 15, or by a date set by mutual agreement of the parties.

(8) No panel member shall serve as witness or in any other capacity at a hearing before the panel of which he is a member. The panel shall convene and hold the hearing in accordance with the provisions of M.G.L. c. 30A, may establish its own guidelines, and shall arrange for recording proceedings and preparing and furnishing transcripts as required by law and its own procedures. The Regional Office of the Department shall provide administrative and support services at cost to the party bringing the appeal or requesting said services.

(9) The panel shall issue a final decision:

- (a) denying certification or classification;
- (b) granting certification and ordering the recording of the owner's classification, imposing such terms and conditions deemed reasonable to carry out the purposes of M.G.L. c. 61; or
- (c) ordering removal of some or all of the parcel from classification.

Copies of the final decision shall be sent to the State Forester, the assessors and the owner, by certified mail, within ten business days after the conclusion of the hearing including any continuation thereof.

(10) Within 45 days of the final decision, the owner or assessors may petition the superior court in the county in which the land is located for review of the decision under the provisions of M.G.L. c. 30A, or the appellate tax board under the provisions of M.G.L. c. 58A. Land shall not be classified, and forest land shall not be withdrawn from classification, until the final determination of such petition.

8.09: Application Fee

As a precondition to certification, the owner of forest land subject to certification or recertification under the terms of M.G.L. c. 61 shall pay an application fee to the Department in the form of certified check or money order payable to: "The Commonwealth of Massachusetts". The application fee shall be the sum of:

(1) a per acre administrative cost assessment set initially at:

0--100 acres:	\$1.00 per acre; minimum fee \$25.00
100.1 acres, plus:	\$1.00 per acre for first 100 acres and \$.75 per additional acre or portion thereof; maximum fee of \$200.00; and

(2) a surcharge calculated annually by the Commissioner of Administration and Finance as the indirect cost rate for that fiscal year for the Department.

The entire fee structure is subject to periodic adjustment and revision by authority of the Executive Office of Administration and Finance under the terms of St. 1980, c. 572.

8.10: Inspection

The State Forester has the authority to enter on certified forest land for the purpose of making investigations to assure compliance with M.G.L. c. 61 and 304 CMR 8.00.

8.11: Severability

If any provision of 304 CMR 8.00 or the application thereof is held to be invalid, such invalidity shall not affect any provision of the regulations not specifically held to be invalid.

REGULATORY AUTHORITY

304 CMR 8.00: M.G.L. c. 61.

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